

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

OMAR AYALA,
Petitioner,
vs.
JO GENTRY, *et al.*,
Respondents.

Case No. 2:17-cv-01617-APG-GWF

ORDER

This action is a *pro se* petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2245 by a Nevada state prisoner. Neither a filing fee nor an application to proceed *in forma pauperis* was submitted with the petition. When filing a habeas action, petitioner must either submit the \$5.00 filing fee for habeas petition or an application to proceed *in forma pauperis*. Due to the lack of an *in forma pauperis* application or filing fee, the present action will be dismissed without prejudice to the filing of a new petition in a new action with a pauper application with all required attachments. It does not appear from the papers presented that a dismissal without prejudice would result in a promptly-filed new petition being untimely. In this regard, petitioner at all times remains responsible for calculating the running of the limitations period as applied to his case and properly commencing a timely-filed habeas corpus action.

IT THEREFORE IS ORDERED that this action is **DISMISSED** without prejudice to the filing of a new petition in a new action.

1 **IT IS FURTHER ORDERED** that the Clerk of the Court shall send petitioner the
2 following: (1) two copies of an *in forma pauperis* application form for a prisoner and one copy of
3 the instructions for the same, (2) two copies of a blank 28 U.S.C. § 2254 habeas petition form and
4 one copy of instructions for the same; and (3) the petition.

5 **IT IS FURTHER ORDERED** that petitioner may file a new petition in a new action, but
6 may not file further documents in this action.

7 **IT IS FURTHER ORDERED** that a certificate of appealability is **DENIED**. Reasonable
8 jurists would not find the dismissal of the improperly-commenced action without prejudice to be
9 debatable or wrong.

10 **IT IS FURTHER ORDERED** that the Clerk of the Court shall enter judgment accordingly.

11 Dated: June 13, 2017.

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14 ANDREW P. GORDON
15 UNITED STATES DISTRICT JUDGE

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